

Appendix Two: Instructions Covered in Other Sets

As noted previously, the Committee chose the topics for its substantive instructions (concerning Section 1983 claims and employment-related claims) because those topics frequently arise in cases litigated within the Third Circuit. The index that follows lists model instructions from other sources that cover other topics. At the end of this Appendix is a statistical summary showing the frequency with which various types of claims result in completed jury trials in district courts within the Third Circuit.

Instructions for Use in Other Federal Circuits

- 1st Circuit (Criminal) (1997) (available online at <http://www.med.uscourts.gov/practices/crimjuryinstrs.htm>, and on Westlaw in the FED-JICRIM database)
 - *See also* Judge Hornby's Updated Revisions to the Pattern Criminal Jury Instructions for the District Courts of the First Circuit (2009), available at <http://www.med.uscourts.gov/practices/crimjuryinstrs.htm>, and Judge Hornby's Draft Civil Instructions, available at <http://www.med.uscourts.gov/practices/civjuryinstrs.htm>
- 5th Circuit (2006) (available online at <http://www.lb5.uscourts.gov/juryinstructions/>, and on Westlaw in the FED-JICIV database)
- 6th Circuit (Criminal) (2005, updated 2007) (available online at http://www.ca6.uscourts.gov/internet/crim_jury_insts.htm, and on Westlaw in the FED-JICRIM database)
- 7th Circuit (2005) (available online at http://www.ca7.uscourts.gov/Pattern_Jury_Instr/pattern_jury_instr.html, and on Westlaw in the FED-JICIV database)
 - Existing instructions include Pattern Civil Jury Instructions; Pattern Criminal Jury Instructions; Pattern Federal Employer Liability Act and Similar Statutes Instructions; and Pattern Patent Law Jury Instructions.
 - Proposed instructions include Proposed Trademark Pattern Civil Jury Instructions; Proposed Pattern Copyright Jury Instructions; and Proposed Family and Medical Leave Act Pattern Jury Instructions.
- 8th Circuit (2007) (available online at

1 http://www.juryinstructions.ca8.uscourts.gov/civil_instructions.htm, and on Westlaw in
2 the FED-JICIV database)

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4 ○ Proposed Model Civil Jury Instructions (2008) also available at
5 http://www.juryinstructions.ca8.uscourts.gov/civil_instructions.htm
6

7 ● 9th Circuit (2007, updated March 2009) (available online at
8 <http://207.41.19.15/web/sdocuments.nsf/civ> and on Westlaw in the FED-JICIV database)
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10 ● 10th Circuit (Criminal) (2005) (available online at
11 <http://www.ca10.uscourts.gov/clerk/rulesandforms.php> and on Westlaw in the
12 FED-JICRIM database)
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14 ● 11th Circuit (2005) (available online at
15 <http://www.ca11.uscourts.gov/documents/pdfs/civjury.pdf>, and on Westlaw in the
16 FED-JICIV database)
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19 **Instructions from States within the Third Circuit**

20
21 ● Delaware (available on Westlaw in the DE-JICIV database)
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23 ● New Jersey (available online at <http://www.judiciary.state.nj.us/civil/civindx.htm>, and on
24 Westlaw in the NJ-JICIV database)
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26 ● Pennsylvania (available on Westlaw in the PA-JICIV database)
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29 **Instructions from Other Sources**

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31 ● American Bar Association (ABA):
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- 33 ○ Model Jury Instructions in Civil Antitrust Cases (2005)
- 34 ○ Model Jury Instructions: Patent Litigation (2005)
- 35 ○ Model Jury Instructions: Securities Litigation (1996)
36

37 ● American Intellectual Property Law Association, Model Patent Jury Instructions (2005,
38 updated 2008) (available online at
39 [http://www.aipla.org/Template.cfm?template=/ContentManagement/ContentDisplay.cfm](http://www.aipla.org/Template.cfm?template=/ContentManagement/ContentDisplay.cfm&ContentID=10448)
40 &ContentID=10448)
41

42 ● Michael Avery, David Rudovsky & Karen M. Blum, Police Misconduct: Law and
43 Litigation (3d ed. 2004) (available on Westlaw in the POLICEMISC database)

- Federal Circuit Bar Association, Model Patent Jury Instructions (updated 2008) (available online at www.fedcirbar.org)
- Kevin F. O'Malley, Jay E. Grenig, & William C. Lee, Federal Jury Practice and Instructions – Civil (2006 & Supp. 2009) (available on Westlaw in the FED-JICIV database)
- Leonard Sand, John S. Siffert, Walter P. Loughlin, Steven A. Reiss & Nancy Batterman, Modern Federal Jury Instructions – Civil (looseleaf, updated through 2007) (available on Lexis in the Matthew Bender library)
- Martin A. Schwartz & George C. Pratt, 4 Section 1983 Litigation: Jury Instructions (looseleaf, updated through 2007)

Instructions That Pertain to Federal Claims and Are Not Covered in Third Circuit Models

- Admiralty
 - 5th Cir. – 4.1 - 4.13
 - 8th Cir. – 8.10 - 8.90
 - 9th Cir. – 7.1 - 7.12
 - 11th Cir. – Federal Claims 6.1 & 6.2
 - O'Malley, Grenig & Lee – Chapter 156
 - Sand – Chapter 90
- Antitrust
 - 5th Cir. – 6.1 & 6.2
 - 11th Cir. – Federal Claims 3.1 & 3.2
 - ABA, Model Jury Instructions in Civil Antitrust Cases
 - O'Malley, Grenig & Lee – Chapter 150
 - Sand – Chapters 79 - 81
- Bankruptcy
 - O'Malley, Grenig & Lee – Chapter 164
- Civil Rights – Education Discrimination

- O'Malley, Grenig & Lee – Chapter 177
- Civil Rights – First Amendment – Libel
 - Sand – Chapter 91
- Civil Rights – Housing Discrimination
 - O'Malley, Grenig & Lee – Chapter 169
 - Sand – 87-37 - 87-64A
- Civil Rights – Section 1983 Claims
 - Conditions of Confinement
 - 5th Cir. – 10.7
 - 7th Cir. – 7.10
 - O'Malley, Grenig & Lee – 166.22
 - Schwartz & Pratt – 11.02.1 - 11.02.5
 - Denial of Access to Courts
 - 7th Cir. – 8.01 - 8.03
 - 11th Cir. – Federal Claims 2.1
 - O'Malley, Grenig & Lee – 166.24
 - Law Enforcement – Other Violations
 - Excessive Bail
 - Schwartz & Pratt – 9.04
 - Failure to Produce Exculpatory Evidence
 - Avery, Rudovsky & Blum – 12.29 - 12.30
 - Schwartz & Pratt – 9.01
 - Manufactured, Coerced, or False Evidence
 - Avery, Rudovsky & Blum – 12.25 - 12.28
 - Schwartz & Pratt – 9.02
 - Plaintiff's Status

- Schwartz & Pratt – 3.04.1 - 3.04.3
- Prisoner – Disciplinary Sanctions
 - Schwartz & Pratt – 11.04.1 - 11.04.3
 - Prisoner – Retaliation
 - 7th Cir. – 6.02 & 6.03
 - 11th Cir. – Federal Claims 2.1
 - Procedural Due Process
 - O’Malley, Grenig & Lee – 168.80 - 168.151
 - Schwartz & Pratt – 6.01.1 - 6.01.4
 - Regulatory Takings
 - Schwartz & Pratt – 6.03.1
 - Substantive Due Process
 - Schwartz & Pratt – 6.02.1 - 6.02.5
 - Unreasonable Search
 - 9th Cir. – 9.11 - 9.15
 - Avery, Rudovsky & Blum – 12.15 - 12.19
 - O’Malley, Grenig & Lee – 165.22
 - Sand – 87-74B
- Civil Rights – Section 1985 Conspiracy Claims
 - O’Malley, Grenig & Lee – Chapter 167
 - Sand – 87-100 - 87-111
- Damages
 - 5th Cir. – 2.22 (cautionary instruction); 15.1 - 15.15
 - 9th Cir. – 5.1 - 5.6
 - 11th Cir. – Supplemental Damages 1.1 - 6.1
 - Schwartz & Pratt – Chapter 18

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2 ● Defenses

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4 ○ Miscellaneous

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6 - O'Malley, Grenig & Lee – 107.01 - 107.04

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8 ○ Statute of Limitations

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10 - 5th Cir. – 14.1

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12 ● Eminent Domain

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14 ○ 5th Cir. – 13.3

15 ○ 11th Cir. – Federal Claims 9.1

16 ○ O'Malley, Grenig & Lee – Chapter 154

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18 ● Evidence

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20 ○ Admissions in Pleadings

21
22 - O'Malley, Grenig & Lee – 101.46

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24 ○ Credibility of Witnesses

25
26 - 1st Cir. (Criminal) – 1.06, 3.06

27 - 6th Cir. (Criminal) – 1.07

28 - 10th Cir. (Criminal) – 1.08

29 - O'Malley, Grenig & Lee – 105.01 - 105.12

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31 ○ Cross-Examination of Character Witness

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33 - 8th Cir. – 2.07

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35 ○ Demonstrative Evidence

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37 - 5th Cir. – 2.8

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39 ○ Fingerprints

40
41 - O'Malley, Grenig & Lee – 104.51

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43 ○ Habit or Routine Practice Evidence

- Sand – 74-6
- Handwriting
 - O’Malley, Grenig & Lee – 104.52
- Impeachment by Inconsistent Statements
 - 1st Cir. (Criminal) – 2.02
 - 5th Cir. – 2.16
 - 6th Cir. (Criminal) – 7.04
 - 10th Cir. (Criminal) – 1.10
 - 11th Cir. – Federal Claims 4.1
 - O’Malley, Grenig & Lee – 105.04
- Inferences and Presumptions
 - O’Malley, Grenig & Lee – 104.20 - 104.27
- Oral Statements or Admissions
 - O’Malley, Grenig & Lee – 104.53
- Pleadings
 - O’Malley, Grenig & Lee – 103.32
- Requests for Admission
 - Sand – 74-15
- Similar Acts
 - 1st Cir. (Criminal) – 2.05
 - 5th Cir. – 2.10
 - 10th Cir. (Criminal) – 1.30
 - Sand – 74-6 - 74-8.1
- Statements by Patient to Doctor
 - Sand – 74-10

- Stipulations at Pretrial Conference
 - 1st Cir. (Criminal) – 2.01
 - O’Malley, Grenig & Lee – 101.47
- View of Location Permitted
 - O’Malley, Grenig & Lee – 102.26
- General Instructions
 - Common Counsel
 - Sand – 71-8
 - Judge’s Comments on Evidence
 - O’Malley, Grenig & Lee – 102.73
 - Judge’s Questions to Witnesses
 - O’Malley, Grenig & Lee – 101.30, 102.72
 - Missing Witness
 - 1st Cir. (Criminal) – 2.11
 - 5th Cir. – 2.9
 - O’Malley, Grenig & Lee – 104.25
 - No Transcript Available to the Jury
 - 9th Cir. – 1.13
 - Previous Trial
 - 1st Cir. (Criminal) – 1.03
 - 8th Cir. – 2.06
 - Federal Judicial Center Pattern Instruction 14
 - Sand 71-11
 - Publicity During Trial
 - O’Malley, Grenig & Lee – 102.12

- Reprimand of Counsel for Misconduct
 - O'Malley, Grenig & Lee – 102.70
 - Sand – 71-7
- Sequestration
 - O'Malley, Grenig & Lee – 101.12
- Sympathy
 - Sand – 71-10
- Tests and Experiments
 - 9th Cir. – 2.9
- Verdict
 - O'Malley, Grenig & Lee – 106.01 - 106.16
- Withdrawal of Claim
 - 8th Cir. – 2.11 & 3.05
 - O'Malley, Grenig & Lee – 102.60
- Intellectual Property
 - Copyright
 - 9th Cir. – 17.0 - 17.27
 - O'Malley, Grenig & Lee – Chapter 160
 - Sand – Chapter 86B
 - Patent
 - 5th Cir. – 9.1 - 9.11
 - 7th Circuit Pattern Patent Law Jury Instructions
 - 11th Cir. – Federal Claims 8.1
 - American Intellectual Property Law Association, Model Patent Jury Instructions
 - ABA, Model Jury Instructions: Patent Litigation

- Federal Circuit Bar Association
- O'Malley, Grenig & Lee: Chapter 158
- Sand: Chapters 81 & 86
- Trademark
 - 9th Cir. – 15.0 - 15.27
 - O'Malley, Grenig & Lee – Chapter 159
 - Sand – Chapter 86A
- Labor & Employment
 - Employee's Claims Against Employer and Union
 - 5th Cir. – 11.3
 - 9th Cir. – 13.1 & 13.2
 - 11th Cir. – Federal Claims 1.9.1
 - O'Malley, Grenig & Lee – 157.80 - 157.140
 - Employer's Claim against Union
 - O'Malley, Grenig & Lee – 157.01 - 157.71
 - Fair Labor Standards Act
 - 5th Cir. – 11.1
 - 11th Cir. – Federal Claims 1.7.1
 - O'Malley, Grenig & Lee – Chapter 175
- Miscellaneous Statutory Actions
 - Automobile Dealers Day-in-Court Act
 - 5th Cir. – 13.1
 - 11th Cir. – Federal Claims 11.1
 - O'Malley, Grenig & Lee – Chapter 151
 - Emergency Medical Treatment And Active Labor Act
 - O'Malley, Grenig & Lee – Chapter 176
 - Fair Credit Reporting Act

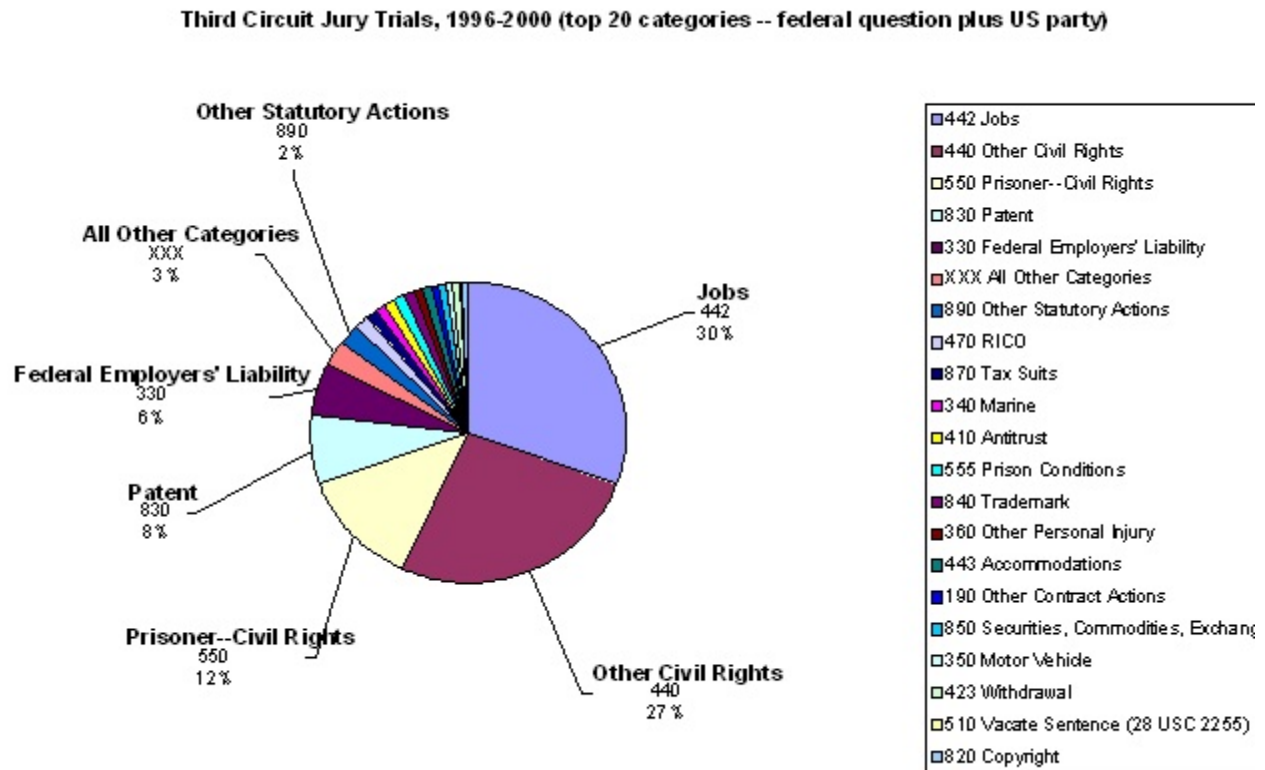
- O'Malley, Grenig & Lee – Chapter 153
 - False Claims Act
 - O'Malley, Grenig & Lee – Chapter 178
 - Interstate Land Sales Full Disclosure Act
 - 5th Cir. – 13.4
 - 11th Cir. – Federal Claims 13.1
 - Odometer Fraud
 - 5th Cir. – 13.2
 - 8th Cir. – 6.01 & 6.51
 - 11th Cir. – Federal Claims 12.1
 - Petroleum Marketing Practices Act
 - O'Malley, Grenig & Lee – Chapter 152
- Party Status
 - All Persons Equal Before the Law
 - O'Malley, Grenig & Lee – 103.11 & 103.12
 - Corporation as Party
 - 5th Cir. – 2.13
 - 11th Cir. – Basic 2.2
 - Sand – 72-1
 - O'Malley, Grenig & Lee – 103.12
 - Government as Party
 - 11th Cir. – Basic 2.3
 - Multiple Parties
 - 5th Cir. – 2.5
 - 6th Cir. (Criminal) – 2.01B-D
 - 8th Cir – 2.08A

- 9th Cir. – 3.11
- 10th Cir. (Criminal) – 1.21 - 1.22
- O'Malley, Grenig & Lee – 102.41, 103.10, 103.13, 103.14
- Railroad Employees
 - Federal Employers' Liability Act
 - 5th Cir. – 5.1
 - 8th Cir. – 7.01 - 7.11
 - 9th Cir. – 6.1 - 6.7
 - 11th Cir. – Federal Claims 7.1
 - O'Malley, Grenig & Lee – 155.01 - 155.74
 - Sand – Chapter 89
 - Federal Safety Appliance Act
 - 5th Cir. – 5.2
 - 8th Cir. – 7.05
 - O'Malley, Grenig & Lee – 155.80 - 155.151
- RICO
 - 5th Cir. – 8.1
 - 10th Cir. (Criminal) – 2.74 - 2.76
 - 11th Cir. – Federal Claims 5.1
 - O'Malley, Grenig & Lee – Chapter 161
 - Sand – Chapter 84
- Securities
 - 5th Cir. – 7.1
 - 9th Cir. – 18.0 - 18.9
 - 11th Cir. – Federal Claims 4.1 - 4.3
 - ABA, Model Jury Instructions: Securities Litigation
 - O'Malley, Grenig & Lee – Chapter 162
 - Sand – Chapters 82 & 83
- Tax Refunds
 - 5th Cir. – 12.1 - 12.7
 - 9th Cir. – 8.1 & 8.2
 - 11th Cir. – Federal Claims 10.1 - 10.6

- 1 ○ O'Malley, Grenig & Lee – Chapter 163
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- 3 ● Vicarious Liability
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- 5 ○ 9th Cir. – 4.1 - 4.17
- 6 ○ 11th Cir. – Federal Claims 1.10.4.1 - 1.10.5.2
- 7 ○ O'Malley, Grenig & Lee – Chapter 108

Statistical Summary

As a rough method of estimating the relative frequency of different types of claims in jury trials within the Third Circuit, the following data may be useful. These data were obtained by searching the database maintained at <http://teddy.law.cornell.edu:8090/questtr7900.htm>; the database contains data “gathered by the Administrative Office of the United States Courts,



assembled by the Federal Judicial Center, and disseminated by the Inter-university Consortium for Political and Social Research,” *see id.* The search included “all” case categories, with any of three bases of jurisdiction (“US defendant,” “US plaintiff,” or “federal question”). (The search’s limitation on bases of jurisdiction was intended to eliminate diversity cases, which presumably would typically involve state-law claims.) The search was limited to completed jury trials, within the Third Circuit, that terminated during the years 1996 - 2000. (For a discussion of the year variable, see <http://teddy.law.cornell.edu:8090/year.htm>.) The case categories were defined by reference to the category selected on the Civil Cover Sheet (available online at <http://www.uscourts.gov/forms/JS044.pdf>). *See* Fifth ICPSR Edition (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 1993), available online at <http://teddy.law.cornell.edu:8090/codebook.htm>.